

## **Chapter 4901:1-37**

### **Corporate Separation**

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4901:1-37-01      **Definitions.**

- (A) "Affiliates" are companies that are related to each other due to common ownership or control. The affiliate standards shall also apply to any internal merchant function of the electric utility whereby the electric utility provides a competitive service.
- (B) "Commission" means the public utilities commission of Ohio.
- (C) Competitive retail electric service provider means a provider of a competitive retail electric service as defined in division (A)(4) of section 4928.01 of the Revised Code.
- (D) Electric services company shall have the meaning set forth in division (A)(9) of section 4928.01 of the Revised Code.
- (E) Electric utility shall have the meaning set forth in division (A)(11) of section 4928.01 of the Revised Code.
- (F) Employees are all full- or part-time employees of an electric utility or its affiliates, as well as consultants, independent contractors, or any other persons performing various duties or obligations on behalf of or for an electric utility or its affiliate.
- (G) Fully allocated costs are the sum of direct costs plus an appropriate share of indirect costs. For purposes of these rules, the term fully allocated costs shall have the same meaning as the term fully loaded embedded costs as that term appears in division (A)(3) of section 4928.17 of the Revised Code.
- (H) "Person" shall have the meaning set forth in division (A)(24) of section 4928.01 of the Revised Code.
- (I) "Staff" means the staff of the commission or its authorized representative.

**4901:1-37-02 Purpose and scope.**

- (A) The purpose of this chapter is to require all of the state's electric utilities to meet the same standards so a competitive advantage is not gained solely because of corporate affiliation.
- (B) This chapter is intended to create competitive equality, prevent unfair competitive advantage, prohibit the abuse of market power and effectuate the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (C) The commission may waive any requirement of Chapter 4901:1-37 of the Administrative Code for good cause shown.
- (D) To ensure compliance with this chapter, examination of the books and records of affiliates may be necessary.
- (E) Violations of this chapter shall be subject to section 4928.18 of the Revised Code. The electric utility has the burden of proof to demonstrate compliance with this chapter.

**4901:1-37-03      Applicability.**

- (A) The provisions of this chapter shall be applicable in accordance with sections 4928.17 and 4928.18 of the Revised Code and apply to:
- (1) The activities of the electric utility and its transactions or other arrangements with its affiliates.
  - (2) Any shared services of the electric utilities with any affiliates.
  - (3) The sale or transfer of generating assets.
- (B) Nothing in this chapter is to be construed as prohibiting or otherwise impeding an electric utility's ability to conduct activities pursuant to rules 4901:1-38-03 to 4901:1-38-05 of the Administrative Code.

4901:1-37-04      **General provisions.**

## (A) Structural safeguards.

- (1) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall function independently of each other.
- (2) Each electric utility and its affiliates that provide services to customers within the electric utility's service territory shall not share facilities and services if such sharing in any way violates paragraph (D) of this rule.
- (3) Cross-subsidies between an electric utility and its affiliates are prohibited. An electric utility's operating employees and those of its affiliates shall function independently of each other.
- (4) An electric utility may not share employees and/or facilities with any affiliate, if the sharing, in any way, violates paragraph (D) of this rule.
- (5) An electric utility shall ensure that all shared employees appropriately record and charge their time based on fully allocated costs.
- (6) Transactions made in accordance with rules, regulations, or service agreements approved by the federal energy regulatory commission, securities and exchange commission, and the commission, which rules the electric utility shall maintain in its cost allocation manual (CAM) and file with the commission, shall provide a rebuttable presumption of compliance with the costing principles contained in this chapter.

## (B) Separate accounting.

Each electric utility and its affiliates shall maintain, in accordance with generally accepted accounting principles and an applicable uniform system of accounts, books, records, and accounts that are separate from the books, records, and accounts of its affiliates.

## (C) Financial arrangements.

Unless otherwise approved by the commission, the financial arrangements of an electric utility are subject to the following restrictions:

- (1) Any indebtedness incurred by an affiliate shall be without recourse to the electric utility.
- (2) An electric utility shall not enter into any agreement with terms under which the electric utility is obligated to commit funds to maintain the financial viability of an affiliate.
- (3) An electric utility shall not make any investment in an affiliate under any circumstances in which the electric utility would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of an affiliate.

- (4) An electric utility shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
- (5) An electric utility shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise with respect to any security of an affiliate.
- (6) An electric utility shall not pledge, mortgage, or use as collateral any assets of the electric utility for the benefit of an affiliate.

(D) Code of Conduct.

- (1) The electric utility shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.
- (2) On or after the effective date of this chapter, the electric utility shall make customer lists, which include name, address, and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric service providers transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.
- (3) Employees of the electric utility's affiliates shall not have access to any information about the electric utility's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services) that is not contemporaneously available, readily accessible, and in the same form and manner available to nonaffiliated competitors providing retail electric service.
- (4) An electric utility shall treat as confidential all information obtained from a competitive retail electric service provider, both affiliated and nonaffiliated, and shall not release such information, unless a competitive retail electric service provider provides authorization to do so or unless the information was or thereafter becomes available to the public other than as a result of disclosure by the electric utility.
- (5) The electric utility shall not tie (or allow an affiliate to tie), as defined by state and federal antitrust laws, or otherwise condition the provision of the electric utility's regulated services, discounts, rebates, fee waivers, or any other waivers of the electric utility's ordinary terms and conditions of service, including but not limited to tariff provisions, to the taking of any goods and/or services from the electric utility's affiliates.
- (6) The electric utility shall ensure effective competition in the provision of retail electric service by avoiding anticompetitive subsidies flowing from a noncompetitive retail

electric service to a competitive retail electric service or to a product or service other than retail electric service, and vice versa.

- (7) The electric utility, upon request from a customer, shall provide a complete list of all competitive retail electric service providers operating on the system, but shall not endorse any competitive retail electric service providers, indicate that an electric services company is an affiliate, or indicate that any competitive retail electric service provider will receive preference because of an affiliate relationship.
- (8) The electric utility shall use reasonable efforts to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power and the electric utility's compliance officer shall promptly report any such unreasonable sales practices, market deficiencies, and market power to the director of the utilities department (or their designee).
- (9) Employees of the electric utility or persons representing the electric utility shall not indicate a preference for an affiliated electric services company.
- (10) The electric utility shall provide comparable access to products and services related to tariffed products and services and specifically comply with the following:
  - (a) An electric utility shall be prohibited from unduly discriminating in the offering of its products and/or services.
  - (b) The electric utility shall apply all tariff provisions in the same manner to the same or similarly situated entities, regardless of any affiliation or nonaffiliation.
  - (c) The electric utility shall not, through a tariff provision, a contract, or otherwise, give its affiliates or customers of affiliates preferential treatment or advantages over nonaffiliated competitors of retail electric service or their customers in matters relating to any product and/or service.
  - (d) The electric utility shall strictly follow all tariff provisions.
  - (e) Except to the extent allowed by any applicable law, regulation, or commission order, the electric utility shall not be permitted to provide discounts, rebates, or fee waivers for any retail electric service.
- (11) Shared representatives or shared employees of the electric utility and affiliated electric services company shall clearly disclose upon whose behalf their public representations are being made when such representations concern the entity's provision of electric services.

(E) Emergency.

- (1) Notwithstanding the foregoing, in a declared emergency situation, an electric utility may take actions necessary to ensure public safety and system reliability.
- (2) The electric utility shall maintain a log of all such actions that do not comply with this chapter, and such log shall be subject to review by the commission and its staff.

4901:1-37-05      **Application.**

- (A) Consistent with section 4928.17 of the Revised Code, an electric utility that provides in this state, either directly or through an affiliate, a noncompetitive retail electric service and a competitive retail electric service (or a noncompetitive retail electric service and a product or service other than retail electric service) shall file with the commission an application for approval of a proposed corporate separation plan. The application shall include a narrative describing how the plan ensures competitive equality, prevents unfair competitive advantage, prohibits the abuse of market power, and effectuates the policy of the state of Ohio embodied in section 4928.02 of the Revised Code.
- (B) The proposed corporate separation plan shall be a stand alone document that, at a minimum, includes the following:
- (1) Provisions that maintain structural safeguards.
  - (2) Provisions that maintain separate accounting.
  - (3) A list of all current affiliates identifying each affiliate's product(s) and/or service(s) that it provides.
  - (4) A list identifying and describing the financial arrangements between the electric utility and all affiliates.
  - (5) A code of conduct policy that complies with this chapter and that employees of the electric utility and affiliates must follow.
  - (6) A description of any joint advertising and/or joint marketing activities between the electric utility and an affiliate that the electric utility intends to utilize, including when and where the name and logo of the electric utility will be utilized, and explain how such activities will comply with this chapter.
  - (7) Provisions related to maintaining a cost allocation manual (CAM).
  - (8) A description and timeline of all planned education and training, throughout the holding company structure, to ensure that electric utility and affiliate employees know and can implement the policies and procedures of this rule. The information shall be maintained on the electric utilities' public web site.
  - (9) A copy of a policy statement to be signed by electric utility and affiliate employees who have access to any nonpublic electric utility information, which indicates that they are aware of, have read, and will follow all policies and procedures regarding limitation on the use of nonpublic electric utility information. The statement will include a provision stating that failure to observe these limitations will result in appropriate disciplinary action.

- (10) A description of the internal compliance monitoring procedures and the methods for corrective action for compliance with this chapter.
  - (11) A designation of the electric utility's compliance officer who will be the contact for the commission and staff on corporate separation matters. The compliance officer shall certify that the approved corporation separation plan is up to date and in compliance with the commission's rules and orders. The electric utility shall notify the commission and the director of the utilities department (or their designee) of changes in the compliance officer.
  - (12) A detailed description outlining how the electric utility and its affiliates will comply with this chapter. The format shall identify the provision and then provide the description.
  - (13) A detailed listing of the electric utility's electric services and the electric utility's transmission and distribution affiliates' electric services.
  - (14) A complaint procedure to address issues concerning compliance with this chapter, which, at a minimum, shall include the following:
    - (a) All complaints, whether written or verbal, shall be referred to the compliance officer designated by the electric utility to handle corporate separation matters or the compliance officer's designee.
    - (b) The complaint shall be acknowledged within five working days of its receipt.
    - (c) A written statement of the complaint shall be prepared and include the name of the complainant, a detailed factual report of the complaint, all relevant dates, the entities involved, the employees involved, and the specific claim.
    - (d) The results of the preliminary investigation shall be provided to the complainant in writing within thirty days after the complaint was received, including a description of any course of action that was taken.
    - (e) The written statements of the complaints and resulting investigations required by paragraphs (B)(14)(c) and (B)(14)(d) of this rule shall be kept in the CAM, in accordance with rule 4901:1-37-08 of the Administrative Code for a period of not less than three years.
    - (f) This complaint procedure shall not in any way limit the rights of any person to file a formal complaint with the commission.
- (C) Each electric utility shall file its approved corporate separation plan in its tariff docket.

**4901:1-37-06 Revisions and amendments.**

- (A) All proposed revisions and/or amendments to the electric utility's approved corporate separation plan shall be filed with the commission, and a copy of the filing shall be provided simultaneously to the director of the utilities department (or their designee).
- (B) Except for proposals related to the sale or transfer of assets filed pursuant to rule 4901:1-37-09 of this chapter, if a filing to revise and/or amend the electric utility's corporate separation plan is not acted upon by the commission within sixty days after it is filed, the modified corporate separation plan shall be deemed approved on the sixty-first day after filing.
- (C) Each electric utility shall file any modified corporate separation plan in its tariff docket upon approval of such plan.

**4901:1-37-07 Access to books and records.**

- (A) The electric utility shall maintain records sufficient to demonstrate compliance with this chapter, and shall produce, upon the request of staff, all books, accounts, and/or other pertinent records kept by an electric utility or its affiliates as they may relate to the businesses for which corporate separation is required under section 4928.17 of the Revised Code, including those required under section 4928.145 of the Revised Code.
- (B) The staff may investigate such electric utility and/or affiliate operations and the interrelationship of those operations at the staff's discretion. In addition, the employees and officers of the electric utility and its affiliates shall be made available for informational interviews, at a mutually agreed time and place, as required by the staff to ensure proper separations are being followed.
- (C) If such employees, officers, books, and records cannot be reasonably made available to the staff in the state of Ohio, then upon request of the staff, the appropriate electric utility or affiliate shall reimburse the commission for reasonable travel expenses incurred.

4901:1-37-08      **Cost allocation manual (CAM).**

- (A) Each electric utility that receives products and/or services from an affiliate and/or that provides products and/or services to an affiliate shall maintain information in the CAM, documenting how costs are allocated between the electric utility and affiliates and the regulated and nonregulated operations.
- (B) The CAM will be maintained by the electric utility.
- (C) The CAM is intended to ensure the commission that no cross-subsidization is occurring between the electric utility and its affiliates.
- (D) The CAM will include:
  - (1) An organization chart of the holding company, depicting all affiliates, as well as a description of activities in which the affiliates are involved.
  - (2) A description of all assets, services, and products provided to and from the electric utility and its affiliates.
  - (3) All documentation including written agreements, accounting bulletins, procedures, work order manuals, or related documents, which govern how costs are allocated between affiliates.
  - (4) A copy of the job description of each shared employee.
  - (5) A list of names and job summaries for shared consultants and shared independent contractors.
  - (6) A copy of all transferred employees' (from the electric utility to an affiliate or vice versa) previous and new job descriptions.
  - (7) A log detailing each instance in which the electric utility exercised discretion in the application of its tariff provisions.
  - (8) A log of all complaints brought to the electric utility regarding this chapter.
  - (9) A copy of the minutes of each board of directors meeting, where it shall be maintained for a minimum of three years.
- (E) The method for charging costs and transferring assets shall be based on fully allocated costs.
- (F) The costs should be traceable to the books of the applicable corporate entity.
- (G) The electric utility and affiliates shall maintain all underlying affiliate transaction information for a minimum of three years.

- (H) Following approval of a corporate separation plan, an electric utility shall provide the director of the utilities department (or their designee) with a summary of any changes in the CAM at least every twelve months.
- (I) The compliance officer designated by the electric utility will act as the contact for the staff when staff seeks data regarding affiliate transactions, personnel transfers, and the sharing of employees.
- (J) The staff may perform an audit of the CAM in order to ensure compliance with this rule.

**4901:1-37-09 Sale or transfer of generating assets.**

- (A) Consistent with division (E) of section 4928.17 of the Revised Code, an electric utility shall not sell or transfer any generating asset it wholly or partly owns without prior commission approval.
- (B) An electric utility may apply for commission approval to sell or transfer its generating assets by filing an application to sell or transfer.
- (C) An application to sell or transfer generating assets shall, at a minimum:
  - (1) Clearly set forth the object and purpose of the sale or transfer, and the terms and conditions of the same.
  - (2) Demonstrate how the sale or transfer will affect the current and future standard service offer established pursuant to section 4928.141 of the Revised Code.
  - (3) Demonstrate how the proposed sale or transfer will affect the public interest.
- (D) Upon the filing of such application, the commission may fix a time and place for a hearing if the application appears to be unjust, unreasonable, or not in the public interest. The commission shall fix a time and place for a hearing with respect to any application that proposes to alter the jurisdiction of the commission over a generation asset.
- (E) If, after such hearing or in the case that no hearing is required, the commission is satisfied that the sale or transfer is just, reasonable, and in the public interest, it shall issue an order approving the application to sell or transfer.
- (F) Staff shall have access to all books, accounts, and/or other pertinent records maintained by the transferor and transferee as related to the application to sell or transfer generating assets and in accordance with rule 4901:1-37-07 of the Administrative Code.